

**SUNSHINE ORDINANCE  
TASK FORCE**



**City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION**

May 1, 2012

**DATE THE DECISION ISSUED**

April 4, 2012

*LIBRARY USERS ASSOCIATION v ARTS COMMISSION (CASE NO. 12003)*

**FACTS OF THE CASE**

Complainant Library Users Association alleges that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by failing to provide an opportunity for general public comment during a number of meetings of its Visual Arts Committee ("VAC").

**COMPLAINT FILED**

On January 13, 2012, Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that the VAC failed to include an item for general public comment on its agenda for at least three meetings.

**HEARING ON THE COMPLAINT**

On April 4, 2012, Library Users Association Executive Director Peter Warfield appeared before the Task Force and presented the Library Users Association's complaint. Julio Matos appeared on behalf of the SFAC and presented its response.

Mr. Warfield stated that the Library Users Association attended at least one meeting of the VAC at which there was no item on agenda for general public comment and no opportunity given to members of the public to present general public comment. He provided copies of the agendas for VAC meetings held on September 15, 2009, October 21, 2009, August 17, 2011, and October 19, 2011 that also do not include an item for general public comment.

Mr. Warfield further stated that because there was no provision for general public comment at the VAC meetings, Library Users Association was denied the opportunity to address the possible destruction of the Bernal Heights Branch Library mural, an issue pending before the VAC but not a specific item on agenda at some of the meetings. He alleged that the VAC systematically denied public comment over a period of at least two years to intentionally avoid learning certain information about the mural prior to making a recommendation on the matter to the SFAC.

Mr. Warfield objected to Mr. Matos representing the SFAC at the Task Force hearing. He alleged that Mr. Matos is not a knowledgeable representative because he does not attend SFAC or VAC meetings and had admitted he did not know the location of VAC meetings.

Mr. Matos read a statement from the SFAC in response to the complaint. The SFAC admitted that the VAC had not previously included an item for general public comment on its agendas or allowed opportunity for general public comment at meetings. The SFAC stated the omission was inadvertent and that the VAC changed its agendas to include an item for general public comment as soon as Mr. Warfield brought the omission to its attention. The SFAC provided a copy of the VAC agenda for its December 14, 2011 meeting that includes an item for general public comment.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force found that Sunshine Ordinance Section 67.15 requires that “every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the policy body’s subject matter jurisdiction.”

The Task Force concluded that the VAC is subject to the public testimony requirements of Sunshine Ordinance Section 67.15. The Task Force notes that Sunshine Ordinance Sections 67.3(d)(2) and 67.3(d)(4) defines policy bodies subject to the Sunshine Ordinance as any “commission enumerated in the Charter” and any “advisory board, commission, committee or body, created by the initiative of a policy body.” Based on these definitions, the Task Force concluded that the VAC is such a policy body because it is a committee created by the SFAC, a commission enumerated in the City Charter.

The Task Force further found that Brown Act Section 54954.3 requires “every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on an item of interest to the public . . . that is within the subject matter jurisdiction of the legislative body.”

The Task Force concluded that the VAC is subject to the public testimony provisions of the Brown Act. The Task Force notes that Brown Act Section 54952(b) defines legislative bodies subject to the Brown Act as “a commission . . . created by charter” and “standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction.” Based on these definitions, the Task Force concluded that the VAC is such a legislative body because it is a standing committee of the SFAC, a commission created by the City Charter.

Based on the evidence presented and respondent’s own admissions, the Task Force additionally found that the VAC did not include general public comment as an item on its meeting agendas or provide the opportunity for general public comment during its meetings.

The Task Force observes that the Sunshine Ordinance vests the Task Force with authority to hear complaints alleging violations of public meeting laws and require knowledgeable representatives to appear at those hearings. Section 67.30(c) requires the Task Force to “make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance . . . or the Brown Act*” (emphasis added). Because it is not possible for the Task Force to find a violation of public meeting laws without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds the VAC in violation of Sunshine Ordinance Section 67.15 and Brown Act Section 54954.3 for failure to provide an opportunity for general public comment at multiple meetings and Sunshine Ordinance Section 67.21(e) for failure to send a knowledgeable representative to the Task Force hearing on the complaint.

The VAC shall continue to include an item for general public comment on its meeting agendas, all VAC members shall attend a training session on the public testimony provisions in the Sunshine Ordinance and Brown Act, and the VAC shall appear before the Education, Outreach and Training Committee on Thursday, May 10, 2012 at 4:00 p.m. in Room 406 at City Hall. The Education, Outreach & Training Committee shall monitor VAC compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 4, 2012, by the following vote: (Johnson/Wolfe)

Ayes: Costa, Knee, Manneh, Washburn, West, Wolfe, Johnson

Excused: Chan, Snyder

Absent: Cauthen



Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant  
Tom DeCaigny, SFAC Director of Cultural Affairs, Respondent  
Susan Pontious, SFAC Public Art Program Director, Respondent  
Jerry Threet, Deputy City Attorney